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10/072,266

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Kenji Fukasawa

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10/23/2006

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EXAMINER

CASCHERA, ANTONIO A

ART UNIT

PAPER NUMBER

2628

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,266

Applicant(s)

FUKASAWA, KENJI

Examiner

Antonio A. Caschera

Art Unit

2628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-38, 43, 45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-38, 43, 45 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5-31-06

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 08/14/2006.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in the pending application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-24, 29-38, 43 and 46 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In reference to independent claims 1, 12, 13, 14 and 46, claims 1, 12, 13 and 14 recite the limitation "for each of a plurality of output devices" in line 7 of claim 1, for example. There is insufficient antecedent basis for this limitation in the claim since the preamble of the claims recite, "...an output device," (see line 2 of claim 1, for example). Note, in reference to claim 46, claim 46 recites similar language to the other mentioned claims however the same issue remains

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present in claim 46, in that the preamble claims a single output device however later in the claims, a multitude of output devices seem to be referenced (see line 1 and line 4 of claim 46).

In reference to independent claims 29, 33, 34 and 38, claims 29, 33, 34 and 38 recite the limitation "of each output device" in lines 2-3 of claim 29, for example. There is insufficient antecedent basis for this limitation in the claim since the preamble of the claims recite, "an output control device," (see line 1 of claim 29, for example). Note, in reference to claims 34 and 38, claims 34 and 38 recites similar language to the above mentioned claims however the same issue remains present in claims 34 and 38, in that there is an inconsistency between the referencing of a single output device or multiple output devices within the claims.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-10, 12-38, 43, 45 and 46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In reference to claims 1, 13, 25, 26, 29, 33, and 45, the language of the claims raise questions as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Specifically, the "image data generating device" as disclosed in claims 1, 13, 25, 26 and 46 and the "output control device" as disclosed in claims 29 and 33 are the abstract ideas, which do not produce any tangible results. See MPEP 2106 IV (B)(1). Note,

even though these claims are off apparatus claim and recite the limitation of generating a file, a file or data structure by itself, is not seen as a tangible result (see MPEP 2106 IV (B)(1)(a)).

In reference to claims 12, 28 and 38, the language of the claims raise questions as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Specifically, the “computer-executable program for generating image data” as disclosed in claims 12, 28 and 38, is the abstract idea. See MPEP 2106 IV (B)(1). Note, the Office suggests the Applicant amend the claim language of the claims, and any dependent claims, to read, for example, “A computer-readable medium encoded with a computer program which executes the following functions:.” Further note, these claims also suffer from an additional 101 issue, similar to claims 1, 13, 25, 26, 29, 33 and 45, in that even though a file is generated, a file or data structure by itself, is not seen as a tangible result (see MPEP 2106 IV (B)(1)(a)).

In reference to claims 14, 27, 34 and 46, the language of the claims raise questions as to whether the claims are directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Specifically, the “method for generating image data” as disclosed in claims 14, 27, 34 and 46 is the abstract idea, which does not produce any tangible results. See MPEP 2106 IV (B)(1). Note, these claims do recite the limitation of generating a file however, a file or data structure by itself, is not seen as a tangible result (see MPEP 2106 IV (B)(1)(a)).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 9, 12-16, 22, 24-30, 33-35, 38, 43, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishii et al. (U.S. Patent 5,982,416).

In reference to claims 1, 13, 14, 25-27, 45 and 46, Ishii et al. discloses an image processing apparatus and method performing color matching processing of image data along with device profile data transfers (see column 1, lines 6-9). Ishii et al. discloses the apparatus comprising of an image pickup unit and scanner which both generate image data into the system (see column 3, lines 51-61). Ishii et al. also discloses a data reception unit receiving data from the image pickup unit and scanner device (see column 4, lines 11-16). Ishii et al. discloses a CMS process unit which comprises of input and output device color matching processes coupled to both input and output device profile storage units (see column 4, lines 34-39 and #14 and 15 of Figure 1 and #14, 15, 23, 24, 26 and 25 of Figure 3). Ishii et al. further goes on to disclose the output profile data possibly being conversion data including color space compression instructions according to color reproducible by the output device (see column 4, lines 50-53). Note, the Office interprets the CMS process unit acting functionally equivalent to the output control data acquisition mechanism of Applicant's claims since the output device CMS unit (#24 of Figure 3) acquires output device color reproducible data defining the conditions set forth by the output device to faithfully display image data. Ishii et al. also discloses implementing

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multiple output devices, therefore requiring multiple output device profiles, each profile associated with a specific output device (see column 4, lines 20-30, columns 4-5, lines 65-4 and #21 and 22 of Figure 1). Note, the Office interprets Ishii et al. to disclose outputting to an output device when Ishii et al. discloses outputting profile characteristic data multiplexed with image data (see column 5, lines 21-24 and Figure 4). Also, Ishii et al. explicitly discloses embedding characteristic data (profile data) based on the type of output device with image data (see column 7, lines 32-34). Ishii et al. discloses a data multiplexing unit in a transmission-side configuration of the device, for embedding color space characteristic data, in a file with image data and transmitting this file as output (see column 7, lines 20-45 and Figures 8 and 16). Note, Ishii et al. also discloses alternatively, embedding characteristic data based on the type of output device, with image data (see column 7, lines 32-34). (further see *Response to Arguments below*).

In reference to claims 2 and 15, Ishii et al. discloses all of the claim limitations as applied to claims 1 and 14 respectively above in addition, Ishii et al. further discloses reading out specific output device profile data according the specific type of output device (see column 4, lines 54-64) therefore, the Office interprets the profile data of Ishii et al. to inherently comprise of some sort of identifier data to associate the profile with a specific output device.

In reference to claims 3 and 16, Ishii et al. discloses all of the claim limitations as applied to claims 1 and 14 respectively above. Ishii et al. discloses implementing multiple output devices, therefore requiring multiple output device profiles, each profile associated with a specific output device (see column 4, lines 20-30, columns 4-5, lines 65-4 and #21 and 22 of Figure 1). The Office interprets the output device corresponding CMS process unit acting functionally equivalent to the designating mechanism of Applicant's claims since it must choose

the correct profile for each output device designated to received image data (see column 4, lines 20-30).

In reference to claims 9 and 22, Ishii et al. discloses all of the claim limitations as applied to claims 1 and 14 respectively above. Ishii et al. discloses a CMS process unit which comprises of input and output device color matching processes coupled to both input and output device profile storage units (see column 4, lines 34-39 and #14 and 15 of Figure 1 and #14, 15, 23, 24, 26 and 25 of Figure 3).

In reference to claims 12 and 28, claims 12 and 28 are equivalent in scope to claims 1, 13, 14 and 25-27 and are therefore rejected in a similar manner. In addition, Ishii et al. also discloses the apparatus comprising a computer that includes RAM and ROM memories for storing a program to perform the above CMS methods (see column 4, lines 5-10). (further see *Response to Arguments below*).

In reference to claim 24, Ishii et al. discloses all of the claim limitations as applied to claim 14 above. Ishii et al. discloses the apparatus comprising of an image pickup unit and scanner which both generate image data into the system (see column 3, lines 51-61). Ishii et al. also discloses a data reception unit receiving data from the image pickup unit and scanner device (see column 4, lines 11-16).

In reference to claims 29, 33 and 34, Ishii et al. discloses an image processing apparatus and method performing color matching processing of image data along with device profile data transfers (see column 1, lines 6-9). Ishii et al. discloses the apparatus comprising of an image pickup unit and scanner which both generate image data into the system (see column 3, lines 51-61). Ishii et al. also discloses a data reception unit receiving data from the image pickup unit and

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scanner device (see column 4, lines 11-16). Ishii et al. discloses a CMS process unit which comprises of input and output device color matching processes coupled to both input and output device profile storage units (see column 4, lines 34-39 and #14 and 15 of Figure 1 and #14, 15, 23, 24, 26 and 25 of Figure 3). Ishii et al. further goes on to disclose the output profile data possibly being conversion data including color space compression instructions according to color reproducible by the output device (see column 4, lines 50-53). Note, the Office interprets the CMS process unit acting functionally equivalent to the output control data acquisition mechanism of Applicant's claims since the output device CMS unit (#24 of Figure 3) acquires output device color reproducible data defining the conditions set forth by the output device to faithfully display image data. Ishii et al. also discloses implementing multiple output devices, therefore requiring multiple output device profiles, each profile associated with a specific output device (see column 4, lines 20-30, columns 4-5, lines 65-4 and #21 and 22 of Figure 1). Note, the Office interprets Ishii et al. to disclose outputting to an output device when Ishii et al. discloses outputting profile characteristic data multiplexed with image data (see column 5, lines 21-24 and Figure 4). Also, Ishii et al. explicitly discloses embedding characteristic data (profile data) based on the type of output device with image data (see column 7, lines 32-34). Ishii et al. discloses a data multiplexing unit in a transmission-side configuration of the device, for embedding color space characteristic data, in a file with image data and transmitting this file as output (see column 7, lines 20-45 and Figures 8 and 16). Note, Ishii et al. also discloses alternatively, embedding characteristic data based on the type of output device, with image data (see column 7, lines 32-34). (further see *Response to Arguments below*).

In reference to claims 30 and 35, Ishii et al. discloses all of the claim limitations as applied to claims 29 and 34 respectively above. Ishii et al. discloses a CMS process unit which comprises of input and output device color matching processes coupled to both input and output device profile storage units (see column 4, lines 34-39 and #14 and 15 of Figure 1 and #14, 15, 23, 24, 26 and 25 of Figure 3). Note, the Office believes the apparatus of Ishii et al. inherently acquires new or different profile data when the output device, the target device receiving the processed image data, is changed.

In reference to claim 38, claim 38 is equivalent in scope to claims 29, 33 and 34 and is therefore rejected in a similar manner. In addition, Ishii et al. also discloses the apparatus comprising a computer that includes RAM and ROM memories for storing a program to perform the above CMS methods (see column 4, lines 5-10). (further see *Response to Arguments below*).

In reference to claim 43, Ishii et al. discloses all of the claim limitations as applied to claim 1 above. Ishii et al. further goes on to disclose the output profile data possibly being conversion data including color space compression instructions according to color reproducible by the output device (see column 4, lines 50-53).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-8, 10, 17-21, 23, 31, 32, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishii et al. (U.S. Patent 5,982,416) in view of Kohler et al. (U.S. Patent 5,646,752).

In reference to claims 4, 17, 31, 32, 36 and 37, Ishii et al. discloses all of the claim limitations as applied to claims 2, 15, 29, 30 and 34 respectively above however, Ishii et al. does not explicitly disclose identifying at least one classification selected from a group of classifications consisting of output device category, output device format, manufacturer, and output device model name. Kohler et al. discloses a system for modifying device profile tags (see column 1, lines 64-67 of Kohler et al.). Kohler et al. discloses the profiles comprising of a "DeviceModel" tag stored within the profile (see column 9, lines 11-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the device profile formatting of Kohler et al. with the CMS profile processing techniques of Ishii et al. in order to allow for customizable data to be stored and represented in device profiles, aiding in color transformation processing of image data (see column 2, lines 7-41 of Kohler et al.). Note, in reference to claims 31 and 36, the Office interprets that the tag information of Kohler et al. inherently identifies and is designated to each device. Note, in reference to claim 32 and 37, it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the device profile formatting of Kohler with the CMS profile processing techniques of Ishii et al., enabling the output device CMS processing unit of Ishii et al. to select the correct device profile based on a device name or model, to aid in the CMS processing of image data by allowing for customizable data to be stored (device model/name information) and accessed in the

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device profiles (see column 2, lines 7-41 of Kohler et al.). (further see *Response to Arguments below*).

In reference to claims 5, 6, 18 and 19, Ishii et al. discloses all of the claim limitations as applied to claims 3 and 16 above however, Ishii et al. does not explicitly disclose the output device CMS process unit acquiring profile data with reference to a classification level. Kohler et al. discloses a system for modifying device profile tags (see column 1, lines 64-67 of Kohler et al.). Kohler et al. discloses the profiles comprising of a “DeviceModel” tag stored within the profile (see column 9, lines 11-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the device profile formatting of Kohler with the CMS profile processing techniques of Ishii et al., enabling the output device CMS processing unit of Ishii et al. to select the correct device profile based on a device name or model, to aid in the CMS processing of image data by allowing for customizable data to be stored (device model/name information) and accessed in the device profiles (see column 2, lines 7-41 of Kohler et al.).

In reference to claims 7 and 20, Ishii et al. and Kohler et al. disclose all of the claim limitations as applied to claims 4 and 17 respectively above. Ishii et al. also discloses implementing multiple output devices, therefore requiring multiple output device profiles, each profile associated with a specific output device (see column 4, lines 20-30, columns 4-5, lines 65-4 and #21 and 22 of Figure 1). Kohler et al. discloses the profiles comprising of a “DeviceModel” tag stored within the profile (see column 9, lines 11-19).

In reference to claims 8 and 21, Ishii et al. and Kohler et al. disclose all of the claim limitations as applied to claims 7 and 20 respectively above. Neither Ishii et al. nor Kohler et al.

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explicitly disclose the output formats including xerographic printing, sublimation printing, ink jet printing, CRT display, LCD display, projection display, transmissive display, and reflective display formats. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the above specific output formats in the CMS profile format and processing techniques of Ishii et al. and Kohler et al.. Applicant has not disclosed that supporting these specific output formats provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the monitor and printer profiles of Ishii et al. because the office interprets the exact output format that image data is transformed into to be a matter of design choice as preferred by the designer and to which best suits the applicant at hand. Further, the specific manner in which the image data is ultimately displayed or printed is seen to provide no immediate criticality to the application at hand. Therefore, it would have been obvious to one of ordinary skill in this art to modify the combination of Ishii et al. and Kohler et al. to obtain the invention as specified in claims 8 and 21.

In reference to claims 10 and 23, Ishii et al. discloses all of the claim limitations as applied to claims 1 and 14 respectively above. Although Ishii et al. discloses a CMS process unit which comprises of input and output device color matching processes coupled to both input and output device profile storage units (see column 4, lines 34-39 and #14 and 15 of Figure 1 and #14, 15, 23, 24, 26 and 25 of Figure 3), Ishii et al. does not explicitly disclose generating profile data. Kohler et al. discloses a system for modifying device profile tags (see column 1, lines 64-67 of Kohler et al.). Kohler et al. discloses the system comprising inputting and storing steps for inputting color image data and storing device profile tags (see column 11, lines 35-51). It would

have been obvious to one of ordinary skill in the art at the time the invention was made to implement the device profile formatting of Kohler et al. with the CMS profile processing techniques of Ishii et al. in order to allow for customizable data to be stored and represented in device profiles, aiding in color transformation processing of image data (see column 2, lines 7-41 of Kohler et al.).

Response to Arguments

7. The Office notes the cancellation of claim 11 and addition of claims 45 and 46.
8. Applicant's arguments filed 08/14/06 have been fully considered but they are not persuasive.

In reference to claims 1-10, 12-38, 43, 45 and 46, Applicant argues that the stored profiles of Ishii et al., "...are merely the ones that are previously stored in host computer 10," (see page 13, lines 2-4 of Applicant's Remarks). The Office disagrees.

Firstly by the above remark, the Applicant seems to imply that the claims recite the origin of the stored "output control data" or profiles in Ishii et al. however, it is noted that the features upon which applicant relies (i.e., the "output control data" being specifically originated from some unit or place) are not recited in the rejected claim(s). Further, claims solely recite the "output control data" to be acquired by the "output control data mechanism" and representing "...at least an image reproduction property of each output device" (see lines 6-8 of claim 1, for example). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Further, Applicant argues that Ishii et al. does not disclose the claim limitations as newly amended to the independent claims. The Office disagrees and points out that Ishii et al. discloses the apparatus comprising of an image pickup unit and scanner which both generate image data into the system (see column 3, lines 51-61) (seen as the “image data generating mechanism”). Ishii et al. also discloses a data reception unit receiving data from the image pickup unit and scanner device (see column 4, lines 11-16) (seen as the “image data acquisition mechanism”). Further, Ishii et al. discloses outputting to an output device when Ishii et al. discloses outputting profile characteristic data multiplexed with image data (see column 5, lines 21-24 and Figure 4). Also, Ishii et al. explicitly discloses embedding characteristic data (profile data) based on the type of output device with image data (see column 7, lines 32-34). Ishii et al. discloses a data multiplexing unit in a transmission-side configuration of the device, for embedding color space characteristic data, in a file with image data and transmitting this file as output (see column 7, lines 20-45 and Figures 8 and 16). Therefore the Office maintains its current rejection based upon Ishii et al..

Lastly, Applicant argues that Kohler et al., “...provides no disclosure of the image generating device providing information about the output device classification,” (see page 14, 2nd paragraph of Applicant’s Remarks). The Office disagrees and points to the “profiles” disclosure of Kohler et al. wherein Kohler et al. discloses the profiles comprising of a “DeviceModel” tag stored within the profile (see column 9, lines 11-19). Surely, this can be interpreted equivalent to, “identifying information” including, “...at least one classification selected from...output device category....and output device model name” (see claim 4). Therefore the Office maintains its current rejection based upon Kohler et al..

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Antonio Caschera whose telephone number is (571) 272-7781. The examiner can normally be reached Monday-Thursday and alternate Fridays between 7:00 AM and 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung, can be reached at (571) 272-7794.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks


Washington, D.C. 20231

or faxed to:

571-273-8300 (Central Fax)

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (571) 272-2600.

aac
an **PATENT EXAMINER**
10/16/06


KEE M. TUNG
SUPERVISORY PATENT EXAMINER